

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	Civil Action No.
v.)	
)	
)	
S.D. WARREN COMPANY d/b/a)	
SAPPI FINE PAPER NORTH AMERICA,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	2
II.	APPLICABILITY	3
III.	DEFINITIONS	5
IV.	CIVIL PENALTY	7
V.	COMPLIANCE REQUIREMENTS	7
VI.	REPORTING REQUIREMENTS	8
VII.	STIPULATED PENALTIES	11
VIII.	FORCE MAJEURE	16
IX.	DISPUTE RESOLUTION	18
X.	INFORMATION COLLECTION AND RETENTION	21
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	24
XII.	COSTS	25
XIII.	NOTICES	26
XIV.	EFFECTIVE DATE	27
XIV.	RETENTION OF JURISDICTION	27
XVI.	MODIFICATION	28
XVII.	PUBLIC PARTICIPATION	28
XVIII.	SIGNATORIES/SERVICE	28
XIX.	INTEGRATION	29
XX.	FINAL JUDGMENT	30

WHEREAS, plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA), has filed a complaint in this action concurrently with this Consent Decree, alleging that defendant S.D. Warren Company d/b/a SAPPI Fine Paper North America (SAPPI or Settling Defendant), violated Sections 42 U.S.C. § 7411 and 42 U.S.C. § 7475 of the Clean Air Act (the Act), 42 U.S.C. § 7401 et. seq.;

WHEREAS, the United States in its Complaint alleges that SAAPPI violated the Prevention of Significant Deterioration of Air Quality regulations (PSD) of the Act at its recovery furnace at its Kraft pulp mill, located at 2400 Lakeshore Drive, Muskegon, Michigan (Muskegon Mill) by failing to get PSD permits for, and install Best Available Control Technology (BACT) on, its recovery furnace when it allegedly underwent major modifications which allegedly resulted in net emission increases of sulfur dioxide (SO₂), nitrogen oxide (NO_x) and carbon monoxide (CO) in violation of 40 C.F.R. § 52.21;

WHEREAS, the United States alleges in its Complaint that the same modifications to the recovery furnace (which included numerous alleged life extension projects) violated the New Source Performance Standards (NSPS) reconstruction provisions at 40 C.F.R. § 60.15;

WHEREAS, the United States in its Complaint further alleges that SAPPI failed to comply with various NSPS 40 C.F.R. Part 60,

Subpart BB requirements, including emission limitations, monitoring, testing, record-keeping and reporting;

WHEREAS, Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, Settling Defendant mothballed the recovery furnace on August 19, 2005;

WHEREAS, Settling Defendant has temporarily ceased operation of the recovery furnace and does not currently intend to replace the recovery furnace;

WHEREAS, the United States and the Settling Defendant (the Parties) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and

over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the violations alleged in the Complaint are alleged to have occurred in, and Settling Defendant conducts business in, this judicial district. For purposes of this Decree or any action to enforce this Decree, Settling Defendant consents to the Court's jurisdiction over this Decree or such action and over Settling Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Settling Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 111 and 165 of the Act, 42 U.S.C. §§ 7411 and 7475.

3. Notice of the commencement of this action has been given to the State of Michigan, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Settling Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Muskegon Mill, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Settling Defendant of its

obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the Settling Defendant as a Party under the Decree and be thus bound by the terms thereof, and (2) the United States consents to relieve Settling Defendant of its obligations. At least 30 days prior to such transfer, Settling Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Southern Division, Western District of Michigan, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. Nothing herein shall prevent Settling Defendant from selling the recovery furnace equipment (Facility or recovery furnace) for removal from the current location. Any such sale for removal shall be included in the report required by Paragraph 15.a. during the period such reporting is required.

6. Settling Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose

duties might reasonably include compliance with any provision of this Decree.

7. In any action to enforce this Consent Decree, Settling Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Effective Date" shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures set forth in Section XVII of this Consent Decree (Public Participation);

e. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

f. "Facility" shall mean the recovery furnace of Settling Defendant's Kraft pulp mill equipment, located at 2400 Lakeshore Drive, Muskegon, Michigan;

g. "Mothballing" shall mean the temporary shut-down of equipment and/or a facility;

h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

i. "Parties" shall mean the United States and Settling Defendant;

j. "Reactivation" shall mean restarting any of the recovery furnace equipment (Facility) subject to this Decree that has been mothballed;

k. "Section" shall mean a portion of this Decree identified by a roman numeral;

l. "Settling Defendant" shall mean S.D. Warren Company d/b/a SAPPI Fine Paper North America;

m. "State" shall mean the State of Michigan;

n. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Settling Defendant shall pay the sum of \$586,106 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with instructions to be provided to Settling Defendant, after the effective date of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern Division, Western District of Michigan. At the time of payment, Settling Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-08442 and the civil action number of this case) to the United States in accordance with Section XIII of this Decree (Notices).

10. Settling Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Settling Defendant shall comply with applicable requirements of statutes, regulations, permits, or other legal requirements alleged to have been violated with respect to the Facility.

12. If the recovery furnace is reactivated, the recovery furnace shall constitute a "new source" as that term is defined under the Act.

13. If the recovery furnace is reactivated, Settling Defendant shall apply for the proper PSD and NSPS permits applicable to new sources and shall notify the Parties to this Consent Decree of its decision to reactivate the recovery boiler.

14. Permits. Where any compliance obligation under this Section requires Settling Defendant to obtain a federal, state, or local permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Settling Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Settling Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

15. Settling Defendant shall submit the following reports:

a. Within 30 days after the end of each calendar-year year (i.e., by January 30) after lodging of this Consent Decree, until the five-year anniversary of the payment of the civil penalty under this Consent Decree, Settling Defendant shall submit a report for the preceding year that shall include the status of the Facility, and, if applicable, the status of permit applications and any sale for removal of the recovery furnace. If the recovery furnace is removed or there is a total cessation of operations at the Muskegon Mill, the requirement to submit an annual report for the five year period shall cease with the annual report submission for the year in which the recovery furnace was removed or there was a total cessation of operations at the Muskegon Mill.

b. If Settling Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Settling Defendant shall notify the United States of such violation and its likely duration, in writing, within ten working days of the day Settling Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Settling Defendant shall so state in the report. Settling Defendant shall investigate the cause of the violation and shall then submit an

amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Settling Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Settling Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

16. Whenever any violation of this Consent Decree or any other event affecting Settling Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Settling Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Settling Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

17. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

18. Each report submitted by Settling Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or

supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

19. The reporting requirements of this Consent Decree do not relieve Settling Defendant of any reporting obligations required by the NSPS, Subpart BB of the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

20. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

21. If Settling Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Settling Defendant shall pay a stipulated penalty of \$1,000.00 per day for each day that the payment is late. Late payment of the civil penalty shall be made

in accordance with Section IV, Paragraph 9, above. Stipulated Penalties shall be paid in accordance with Section VII, Paragraph 30, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9, above.

22. Settling Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, according to all applicable requirements of this Decree, and within the specified time schedules established by or approved under this Decree.

23. Notification Requirements. The following Stipulated Penalties shall accrue per violation per day for failing to notify the United States that the recovery furnace has been reactivated:

Penalty Per Violation Per Day Period of Noncompliance

\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

24. Permitting Requirements. The following Stipulated Penalties shall accrue per violation per day for failure to apply

for the appropriate PSD or NSPS permit for the recovery furnace upon reactivation of that unit:

Penalty Per Violation Per Day Period of Noncompliance

\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

25. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VI of this Consent Decree:

Penalty Per Violation Per Day Period of Noncompliance

\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

26. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Settling Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

27. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

28. Stipulated Penalties shall continue to accrue as provided in Paragraph 26, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Settling Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

29. Settling Defendant shall pay Stipulated Penalties for restarting the recovery furnace without applying for the

proper permit between the date of lodging and the Effective Date of this Consent Decree within 30 days of the Effective Date of this Decree.

30. Settling Defendant shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, 9, above or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08442 and United States Attorney's Office file number 2006V00077, and delivered to the office of the United States Attorney, Western District of Michigan, Southern Division, Post Office Box 208, Grand Rapids, MI 49501.

31. Settling Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

32. If Settling Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Settling Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

33. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available

to the United States for Settling Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of PSD or the NSPS, Subpart BB requirements, Settling Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

34. A "force majeure event" is any event beyond the control of Settling Defendant, its contractors, or any entity controlled by Settling Defendant that delays the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Settling Defendant's financial inability to perform any obligation under this Consent Decree.

35. Settling Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Settling Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Settling Defendant shall also provide written notice, as provided in Section XIII of this

Consent Decree (Notices), within seven days of the time Settling Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Settling Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Settling Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Settling Defendant from asserting any claim of force majeure.

36. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Settling Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVI of this Consent Decree (Modification).

37. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Settling Defendant, the United States' position shall be binding, unless Settling Defendant invokes Dispute Resolution under Section IX of this Consent Decree. In any such

dispute, Settling Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Settling Defendant gave the notice required by Paragraph 35, that the force majeure event caused any delay Settling Defendant claims was attributable to that event, and that Settling Defendant exercised best efforts to prevent or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

38. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Settling Defendant's failure to seek resolution of a dispute under this Section shall preclude Settling Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendant arising under this Decree.

39. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Settling Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written

agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes formal dispute resolution procedures as set forth below.

40. Formal Dispute Resolution. Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Settling Defendant's position and any supporting documentation relied upon by Settling Defendant.

41. The United States shall serve its Statement of Position within 45 days of receipt of Settling Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Settling Defendant, unless Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

42. Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United

States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

43. The United States shall respond to Settling Defendant's motion within the time period allowed by the Local Rules of this Court. Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

44. In any dispute brought under Paragraph 40, Settling Defendant shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Act. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

45. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant under this

Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 28, above. If Settling Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

46. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Muskegon Mill at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Settling Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Settling Defendant's compliance with this Consent Decree.

47. Upon request, Settling Defendant shall provide EPA or its authorized representatives splits of any samples taken by Settling Defendant. Upon request, EPA shall provide Settling Defendant splits of any samples taken by EPA.

48. Until five years after the payment of the civil penalty under this Consent Decree, Settling Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to Settling Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph.

49. For the first year after the conclusion of the information-retention period provided in the preceding Paragraph, or in the event that there has been a cessation of operations at

the Muskegon Mill during the five year period set forth in Paragraph 48 for the first year after notice is given of the cessation of operations, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Settling Defendant shall deliver any such documents, records, or other information to EPA. Settling Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

50. Settling Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40

C.F.R. Part 2. As to any information that Settling Defendant seeks to protect as CBI, Settling Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

51. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Settling Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

52. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

53. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions.

54. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Settling Defendant is responsible for achieving and maintaining complete compliance with all applicable

federal, State, and local laws, regulations, and permits; and Settling Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Settling Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

55. This Consent Decree does not limit or affect the rights of Settling Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Settling Defendant, except as otherwise provided by law.

56. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

57. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of

the civil penalty or any Stipulated Penalties due but not paid by Settling Defendant.

XIII. NOTICES

58. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08442

United States Attorney
399 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

and

Director, Air Enforcement Division
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20004

Cynthia A. King
U.S. Environmental Protection Agency
Region 5
C-14J
77 West Jackson Boulevard
Chicago, IL 60604

and

Farro Assadi
U.S. Environmental Protection Agency

Region 5
AE-17J
77 West Jackson Boulevard
Chicago, IL 60604

To Settling Defendant:

Environmental Manager, S.D. Warren Company
2400 Lakeshore Drive
Muskegon, MI 49443
ATTN: Tom Porritt

and

Vice President and General Counsel
SAPPI Fine Paper North America
225 Franklin Street
Boston, MA 02110
ATTN: Sarah G. Manchester

59. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

60. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

61. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XV. RETENTION OF JURISDICTION

62. The Court shall retain jurisdiction over this case for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX

and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

63. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVII. PUBLIC PARTICIPATION

64. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to entry of this Consent Decree without further notice.

XVIII. SIGNATORIES/SERVICE

65. Each undersigned representative of Settling Defendant and the undersigned delegate of the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent

Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

67. Settling Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Decree.

68. Settling Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

69. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or

the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. FINAL JUDGMENT

70. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Settling Defendant.

Dated and entered this ____ day of _____, 2006.

UNITED STATES DISTRICT JUDGE
Western District of Michigan

FOR PLAINTIFF UNITED STATES OF AMERICA:

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. S.D. Warren Company d/b/a SAPPI Fine Paper North America, (W.D. Mich.), relating to alleged violations of the Clean Air Act at Settling Defendant's facility in Muskegon, Michigan:

FOR PLAINTIFF UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources
Division

W. BENJAMIN FISHEROW, Deputy Chief
Environmental Enforcement Section

RANDALL M. STONE, Senior Lawyer
JEFFREY L. SPECTOR, Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-1308
(202) 616-6584 (FAX)

MARGARET M. CHIARA
United States Attorney

MICHAEL L. SHIPARSKI
Assistant United States Attorney
P.O. Box 208
Grand Rapids, MI 49503
(616) 456-2404
(616) 456-2408 (FAX)

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. S.D. Warren Company d/b/a SAPPI Fine Paper North America, (W.D. Mich.), relating to alleged violations of the Clean Air Act at Settling Defendant's facility in Muskegon, Michigan:

BHARAT MATHUR

Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5


CYNTHIA A. KING

Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
C-14J
77 W. Jackson Blvd.
Chicago, IL 60604
312-886-6831

FOR PLAINTIFF UNITED STATES OF AMERICA:

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. S.D. Warren Company d/b/a SAPPI Fine Paper North America, (W.D. Mich.), relating to alleged violations of the Clean Air Act at Defendant's facility in Muskegon, Michigan:

FOR PLAINTIFF UNITED STATES OF AMERICA:


Assistant Administrator, OECA
Headquarters
United States Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. S.D. Warren Company d/b/a SAPPI Fine Paper North America, (W.D. Mich.), relating to alleged violations of the Clean Air Act at Settling Defendant's facility in Muskegon, Michigan:

FOR DEFENDANT S.D WARREN COMPANY d/b/a SAPPI FINE PAPER NORTH AMERICA:

Sarah G. Manchester
Vice President and General Counsel
SAPPI Fine Paper North America
225 Franklin Street
Boston, MA 02110
(617) 368-6532

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

RECEIVED
JAN 10 1994

NOV 10 1993

NOV 10 1993
RECEIVED